

BEFORE THE FEDERAL ELECTION COMMISSION

JAN 26 2001
FEDERAL ELECTION
COMMISSION
SECRETARIAT

In the Matter of the Democratic
National Committee and
Andrew Tobias, as treasurer

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MUR 5046

2001 JAN 26 P 12:50

SENSITIVE

GENERAL COUNSEL'S REPORT #2

I. ACTIONS RECOMMENDED

Accept the offer from the Democratic National Committee (the "DNC") to amend its disclosure reports to reflect the expenses as 441a(d) expenses, and transfer \$17,448 from its federal account to its non-federal account as reimbursement for using non-federal funds to pay for expenses pursuant to 2 U.S.C. § 441a(d). Find reason to believe that the DNC and Andrew Tobias, as treasurer, violated 11 C.F.R. § 102.5(a)(1)(i) by paying expenses for the Clinton/Gore '96 Primary Committee dinner out of a non-federal account. Take no further action against the DNC and Andrew Tobias, as treasurer, and close the file in MUR 5046.

II. ANALYSIS

On July 11, 2000, the Commission found reason to believe that the DNC and Andrew Tobias, as treasurer, failed to report the expenditures for the Clinton/Gore '96 Primary Committee dinner (the "Primary Committee dinner") as Section 441a(d) expenses in violation of 2 U.S.C. § 434(b)(4)(H)(iv). The Commission also determined to take no further action against the DNC provided that the DNC amends its disclosure report to reflect those expenses as Section 441a(d) expenses.

The DNC responded to the Commission's reason to believe findings by stating that they continue to believe that the expenditures were not made on behalf of the 1996 Clinton/Gore Primary Committee. Attachment 1 at 1. Additionally, the DNC states that although they would

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be willing to amend their disclosure reports to reflect the expenses as Section 441a(d) expenses, the expenses for the Primary Committee dinner were paid with both federal and non-federal funds because the DNC viewed them as fundraising expenses. *Id.* Thus, the DNC is concerned that if the disclosure reports are amended, the Commission may seek further findings against them for using non-federal funds to pay for expenses made pursuant to 2 U.S.C. § 441a(d). *Id.* Therefore, in addition to amending its disclosure reports to reflect the expenses as 441a(d) expenses, the DNC offers to transfer \$17,448 from its federal account to its non-federal account in order to expedite the resolution of this matter. *Id.* Finally, the DNC notes that if the Commission considers a finding against the DNC for using non-federal funds for 441a(d) purposes, it is prepared to fully contest such action. *Id.*

The DNC reported the Primary Committee dinner expenses on February 14, 1996 in the amount of \$19,832.33 with the expenses being allocated 30% federal (\$5,949.70) and 70% non-federal (\$13,882.63), and on April 22, 1996 in the amount of \$5,094.33 with the expenses allocated 22% federal (\$1,120.75) and 78% non-federal (\$3,973.58). Attachment 2. The DNC viewed these expenses as fundraising expenses, which are allocated based on the ratio of funds received into its federal account to its total receipts from each fundraising program or event. *See* 11 C.F.R. § 106.5(f)(1). This ratio may be estimated for disbursements made prior to the actual program or event. *Id.* No later than 60 days after each fundraising program or event from which both federal and non-federal funds are collected, the committee shall adjust the allocation ratio for that program or event to reflect the actual ratio of funds received. 11 C.F.R. § 106.5(f)(2). However, if an adjustment is made, the committee shall transfer funds into the appropriate account, and note any adjustments and transfers in the report. *See id.* It does not

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appear that the DNC noted in the disclosure reports that adjustments and transfers were being made. Moreover, the DNC has indicated in its response that the allocation ratio for the expenses at the Primary Committee dinner was 30% federal and 70% non-federal. The total amount of the DNC's expenses toward the Primary Committee dinner was \$24,926.66 (\$19,832.33 + \$5,094.33). A 70% non-federal allocation of this amount would be \$17,448, which is the amount that the DNC is offering to transfer from its federal account to its non-federal account.

Because the initial payment to the Sheraton Hotel was based on an allocation ratio of 30% federal and 70% non-federal, and it does not appear that the DNC, when making the second payment, noted an adjustment to the ratio and a transfer of funds to the appropriate account on its disclosure report, it is reasonable to accept the \$17,448 as the amount that should be transferred into the DNC's non-federal account. Therefore, the Office of General Counsel recommends that the Commission accept the Democratic National Committee's offer to amend its disclosure report to reflect the expenses as 441a(d) expenses, and transfer \$17,448 from its federal account to non-federal account as reimbursement for using non-federal funds for expenses paid pursuant to 2 U.S.C. § 441a(d).

All disbursements, contributions, expenditures and transfers by the committee in connection with any federal election shall be made from its federal account. 11 C.F.R. § 102.5(a)(1)(i). Thus, the DNC's use of funds from its non-federal account to pay for expenses toward the Primary Committee dinner is impermissible. This Office recommends that the Commission find that there is reason to believe that the Democratic National Committee and Andrew Tobias, as treasurer, violated 11 C.F.R. § 102.5(a)(1)(i) by paying expenses for the Clinton/Gore '96 Primary Committee dinner out of a non-federal account. The DNC made these

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payments almost five years ago on February 14, 1996 and April 22, 1996. The statute of limitations will run on these violations very soon. Therefore, this Office also recommends that the Commission take no further action against the Democratic National Committee and Andrew Tobias, as treasurer, for violating 11 C.F.R. § 102.5(a)(1)(i).

III. RECOMMENDATIONS

1. Accept the Democratic National Committee's offer to amend its disclosure report to reflect the expenses as 441a(d) expenses and transfer \$17,448 from its federal account to its non-federal account as reimbursement for using non-federal funds for expenses paid pursuant to 2 U.S.C. § 441a(d);
2. Find reason to believe that the Democratic National Committee and Andrew Tobias, as treasurer, violated 11 C.F.R. § 102.5(a)(1)(i) by paying expenses for the Clinton/Gore '96 Primary Committee dinner out of a non-federal account;
3. Take no further action against the Democratic National Committee and Andrew Tobias, as treasurer, and close the file in MUR 5046; and
4. Approve the appropriate letter.

Lois G. Lerner
Acting General Counsel

1/26/01
Date

BY: Kim Leslie Bright
Associate General Counsel

Attachment

1. Response from the Democratic National Committee, dated November 3, 2000
2. Disclosure Reports of the Democratic National Committee

Staff Assigned: Peter G. Blumberg
Delbert K. Rigsby

21-04-399-4987



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary
FROM: Office of General Counsel
DATE: January 26, 2001
SUBJECT: MUR 5046-General Counsel's Report#2

The attached is submitted as an Agenda document for the Commission Meeting of _____

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Closed Session _____

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